

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18-7-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.28234 of 2006

A. Krishnan, President,
representing the Tamil Nadu All Departments
Watchman and Basic Servants Association,
Mannargudi Nagar Q.M.District ... Petitioner

Vs.

1. The Secretary to Government,
Agriculture Department,
fort St.George, Madras - 9.
2. The Director of Agriculture,
Chepauk, Madras - 600 005.
3. The Secretary to Government,
Finance Department,
Madras - 9. ... Respondents

This writ petition came to be numbered under Article 226 of the Constitution of India, by way of transfer of O.A.No.1513 of 1995 from the file of the Tamil Nadu Administrative Tribunal, with a prayer to direct the respondents to grant personal pay to all the basic personnel in the Agriculture Department in Tamil Nadu Basic Services, who came under the revised scale of pay Rs.750 - 945 as sanctioned P.P. to the basic personnel in Medical Department as per G.O.Ms.No.5 and G.O.Ms.No.669 Finance Pay Cell Department, dated 4.1.1993 and 24.8.1992.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr.V.Manoharan,
Government Advocate

O R D E R

Petitioner association has filed the above writ petition for issuing a writ of mandamus to direct the respondents to grant personal pay to all the basic personnel in the Agriculture Department in the Tamil Nadu Basic Services, who come under the revised scale of pay of Rs.750--945, as sanctioned to the personnel in the Medical Department as per G.O.Ms.No.5 and G.O.Ms.No.669 Finance (Pay Cell) Department, dated 4.1.1993 and 24.8.1992.

2. The case of the petitioner association is that the members of the association, who were appointed as Basic Servants in the Agriculture Department are not paid 5% of their salary as personal pay, as it is paid to the Basic Servants of the Medical Department viz., Cooks, Sanitary Workers, Nursing Assistants and Hospital Workers, eventhough they were also fixed the revised scale of pay of Rs.750--945, similar to the pay scale fixed to the members of the petitioner association. It is further stated in the affidavit that in spite of making several representations to extend the same benefit to the members of the petitioner association, no order is passed, and not extending the said benefit to the Basic Servants of the Agriculture Department is to be treated as denial of equal pay for equal work. The last representation submitted by the petitioner association is dated 14.2.1994 and till date no order is passed is the grievance of the petitioner.

3. The respondents filed counter affidavit before the Tribunal wherein it is stated that by passing G.O.Ms.No.1364 Health and Family Welfare Department dated 21.12.1992, the work norms of the Basic personnel in various medical services viz., Cooks, Sanitary workers, Nursing assistants and Hospital workers was revised at the request of the Tamil Nadu Anaithu Thurai Oozhiyar Sangam (தமிழ்நாடு அனைத்துத் துறை ஊழியர் சங்கம்), Chennai, and Hospital Workers belonging to Category-5. The nature of work of the personnel in this category differs from department to department because of the specialisation. It is further stated in the counter affidavit that all basic service personnel in different departments are classified as single Category-5 and their pay was fixed uniformly as Rs.750--945 and 5% personal pay is also given due to the nature of the duties and post is also fixed for every six beds according to the order issued by the Government and hence there is no discrimination in the pay scale or in ordering personal pay of 5% as it is ordered based on work norms fixed for the Hospital Workers and the said kind of situation is not available for the other basic service personnel, working in other departments. Hence they are not granted personal pay as that of the office assistants of the Health Department and therefore there is no

injustice to the Basic Servants of all departments including that of the Agriculture Department.

4. The learned counsel for the petitioner association submitted that the Basic Servants, being a class by itself, there cannot be any discrimination in payment of salary. Allowing 5% of salary towards personal pay to the Basic Servants of the Health Department is discriminatory and by not extending the same benefit to the members of the petitioner association, who are also the basic servants, the principle of equal pay for equal work is violated, which is in violation of Article 14 and 39(d) of the Constitution of India. The learned counsel also cited two decisions of the Honourable Supreme Court reported in (1982) 1 SCC 618 (Randhir Singh v. Union of India and others) and (1991) 17 Administrative Tribunals Cases 261 (State of W.B. v. Debdas Kumar) to support his contentions.

5. The learned Government Advocate appearing for the respondents on the other hand submitted that the nature of work performed by the Hospital Workers are entirely different from the work of the Basic Servants working in other departments and each Basic Servants in the Health Department has to take care of six patients in the bed in the Government Hospitals and based on the allotment of work only the said 5% of pay is given as personal pay and as such there is no discrimination and there is indelible differentia.

6. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

7. The point in issue is whether the petitioner association has got a right to demand 5% of salary as personal pay as it is given to the basic servants of the Health and Family Welfare Department by applying the principle of equal pay for equal work.

8. In the counter affidavit, at paragraph 12, the reason for giving personal pay to the Basic Servants in various medical services is stated. For proper appreciation the same is extracted hereunder,

"It is submitted that the work norms of the Basic Service Personnel in various Medical Departments was revised by taking the total number of Cooks, Sanitary Workers, Nursing Assistants and Hospital Workers to form a single group and regulated at the rate of one post for every six beds according to the orders issued in G.O.Ms.No.1364, Health and Family Welfare Department, dated 21.12.92. On the

analogy of the orders issued in G.O.Ms.No.669, Finance (PC) Department, dated 24.8.92, the personal pay as granted to Office Assistants were extended to the hospital servants also in G.O.Ms.No.5, Finance (PC) Department, dated 4.1.93. This order is applicable only to the basic service personnel in the Government hospitals based on work norm fixed for the hospital workers. This kind of a situation does not exist in the case of other basic service personnel working in other departments and hence they were not granted personal pay as that of the Office Assistants. Though the Basic Service Personnel were classified under category 5, the personal pay was granted to the Hospital Workers based on the revised work norms ordered in G.O.Ms.No.1364, Health and Family Welfare Department dated 21.12.92. Hence, no injustice has been caused to the other basic personnel who were in the pre-revised scale of Rs.450--720 and the revised scale of Rs.750--945 as the personal pay granted to Office Assistants and Hospital Workers is based upon the work norms."

In view of the work norms fixed for the Hospital Workers viz., Cooks, Sanitary Workers, Nursing Assistants and Hospital Workers, there is functional difference between Basic Servants of other departments, when compared to the Basic Servants working in the Medical Department and hence 5% of their salary is given as personal pay to them. The same cannot be treated as discriminatory treatment and violative of Article 14 of the Constitution of India.

9. Law on this subject i.e., whether the Government is empowered to fix different pay scale to a group of personnel was considered by the Honourable Supreme Court in very many decisions.

(a) In the decision reported in (1991) 1 SCC 619 (Grih Kalyan Kendra Workers' Union v. Union of India) the Honourable Supreme Court considered the performance of different duties of same cadre employees in different departments and upheld the said action of the Government and in paragraph 4 observed as follows,

".....The employees of the Kendra were expected to leave the organisation once they lost the status of dependant of low paid government employees. However, the employees of the Kendra have not met any of these expectations. Some of the employees once inducted into the organisation have continued for a number of years. The employees working in

the Kendra are not regular employees and the duties performed by them are not comparable to any of the employees working under NDMC or any department of Delhi Administration or under the Union of India. The status of the Kendra is a unique one where the work and duties performed by its employees are quite different in nature than those performed by the employees of NDMC and Delhi Administration."

(Emphasis Supplied)

(b) In the case of State of M.P. v. Pramod Bhartiya, (1993) 1 SCC 539, the Honourable Supreme Court in paragraphs 12 and 13, held thus,

"12. It is also not sufficient to say that the service conditions are similar. What is more important and crucial is whether they discharge similar duties, functions and responsibilities. On this score there is a noticeable absence of material. Whether we look at the averments in, and the material produced along with, the original petition or to the averments in the counter-affidavit or even to the averments in the counter-affidavit filed by the Government in M.P.No.2277 of 1985 (upon which the counsel for the respondents has placed strong reliance), we do not find any clear material to show that the duties, functions and responsibilities of both the categories of lecturers are identical or similar. In this context, it would be appropriate to refer to the definition of the expression "same work or work of similar nature" contained in clause (h) of Section 2 of the Equal Remuneration Act, 1976. The said Act was enacted by Parliament (as pointed out by this Court in Mackinnon Mackenzie v. Audrey D'Costa) to implement Article 39(d) of the Constitution and the obligation created by 'The Convention concerning Equal Remuneration for Men and Women Workers' for work of equal value (generally referred to as 'Equal Remuneration Convention, 1951') adopted on June 29, 1951, to which India is a signatory. Article 2 of the Convention obliged the signatory States to effectuate the said rule by all means including the machinery of law. The said Act is applicable to such establishments and employments as may be notified by the Central Government under Section 1(3) of the Act.

Though the said Act is mainly directed against discrimination against women and is also not applicable to the employments or establishments to which the Respondents herein belong, yet the relevance of the said definition cannot be denied, occurs as it does in an enactment made to give statutory shape to the rule of "equal pay for equal work both for men and women". The definition in Section 2(h) reads:

"2. (h) 'same work or work of a similar nature' means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the difference, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment;"

13. It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by Mukharji, J. (as he then was) in Federation of All India Customs and Excise Stenographers 7 the quality of work may vary from post to post. It may vary from institution to institution. We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. The respondents (original petitioners) have failed to establish that their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. They have also failed to establish that the distinction between their scale of pay and that of non-technical lecturers working in Technical Schools is either irrational and that it has no basis, or that it is vitiated by mala fides, either in law or in fact (see the approach adopted in Federation case 7). It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be.

This burden the original petitioners (respondents herein) have failed to discharge."

(c) In (1996) 2 SCC 77 (State of Haryana v. Jasmer Singh) in paragraph 8, the Honourable Supreme Court held as follows,

"It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purpose of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted."

The said decision was followed in the case of Garhwal Jal Sansthan Karmachari Union v. State of U.P., (1997) 4 SCC 24 (para 9) wherein it is observed that the principle of equal pay for equal work is not always easy to apply and there are inherent difficulties in comparing and evaluating work done by different persons in different organisations, or even in the same organisation.

(d) In (2003) 11 SCC 658 (Union of India v. Tarit Ranjan Das) the Honourable Supreme Court considered the issue of same scale of pay fixed for Stenographers Grade 'C' in the Central Secretariat and Stenographer Grade-II in the Office of the Geological Survey of India and upheld the said fixation on the ground that equality is not based on designation or the nature of work alone, but there are several other factors like responsibilities, reliabilities, experience, confidentiality involved, functional need and the requirements commensurate with the position in the hierarchy.

(e) In the decision reported in (2005) 2 SCC 286 (Deb Narayan Shyam v. State of W.B.) also the Honourable Supreme Court considered the difference in duties and rejected the claim for equal pay for equal work and in paragraphs 15 and 16 held as follows,

"15. While the work and duties performed by the Amins and Surveyors are not identical,

there is no question of giving them equal pay for equal work. The principle of "equal pay for equal work" depends upon the nature of duties performed by a particular category of posts and the qualifications for their recruitment. From the above discussion, it is clear that neither the duties nor the functions are identical nor the recruitment for the posts of Amins and Surveyors is identical as the qualification for recruitment for both the posts is different. A large number of decisions have been cited before us with regard to the principle of "equal pay for equal work" by both sides. We need not deal with the said decisions to overburden this judgment. Suffice it to say that the principle is settled that if the two categories of posts perform the same duties and functions and carry the same qualification, then there should not be any distinction in pay scale between the two categories of posts similarly situated. But when they are different and perform different duties and qualifications for recruitment being different, then they cannot be said to be equated so as to qualify for equal pay for equal work. In this connection reference has been made to the following decisions:

1. State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121
2. Secy., Finance Deptt. v. W.B. Registration Service Assn., 1993 Supp (1) SCC 153
3. Shyam Babu Verma v. Union of India, (1994) 2 SCC 521
4. State of W.B. v. Hari Narayan Bhowal, (1994) 4 SCC 78
5. Union of India v. Ram Gopal Agarwal, (1998) 2 SCC 589
6. Union of India v. Pradip Kumar Dey, (2000) 8 SCC 580
7. Govt. of W.B. v. Tarun K. Roy, (2004) 1 SCC 347.

16. We need not deal with the aforesaid cases on the subject of the principle of equal pay for equal work as it is more than clear that the post of Amin is different from that of the Surveyor as the Amins do not discharge the

same duties as that of the Surveyors and as such they are not entitled to claim equal pay for equal work. All these cases which have been referred to above are only for the purpose of showing that in each case there are some peculiar reasons which have persuaded the Court to grant benefit in some cases and decline to grant benefit in other cases. In the present case, there is categorical finding that both the categories of posts discharge different functions and duties and there is no question of granting equal pay on the principle of "equal pay for equal work".

(Emphasis Supplied)

10. The decisions cited by the learned counsel for the petitioner reported in (1982) 1 SCC 618 (Randhir Singh v. Union of India) is not supporting the case of the petitioner. In paragraph 6 of the said judgment, it is held as follows.

"..... We concede that equation of posts and equation of pay are matters primarily for the executive Government and expert bodies like the Pay Commission and not for courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same."

(Emphasis Supplied)

The other decision cited by the learned counsel for the petitioner reported in (1991) 17 Administrative Tribunal Cases 261 (State of W.B. v. Debdas Kumar) is not a case where different duties were performed and therefore the said judgment will not help the petitioner to sustain the argument for claiming equal pay for equal work.

11. From the perusal of the above decisions and having regard to the counter affidavit filed by the respondents justifying 5% of

salary as personal pay to the basic servants of Health Department, I am of the firm view that the nature of the duties performed by the Basic Servants of the Health Department and the Agriculture Department are dissimilar and the petitioner association has not made out a case for ordering equal pay for equal work.

There is no merit in the writ petition and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr

To

1. The Secretary to Government, Agriculture Department,
Fort St.George, Madras - 9.
2. The Director of Agriculture, Chepauk, Madras - 600 005.
3. The Secretary to Government, Finance Department,
Madras - 9.

1 cc to Mr.G.Elenchezhiyan, Advocate, SR. 44425
1 cc to the Government Pleader, sr. 44127

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W.P.No.28234 of 2006

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